

November 15, 1999

The Honorable Carolyn L. Huntoon
Assistant Secretary for
Environmental Management
Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585-0113

Dear Dr. Huntoon:

I am sending this letter in response to your reply of October 15, 1999, to my letter of September 22, 1999, regarding issues discussed during the recent public meeting that the Defense Nuclear Facilities Safety Board (Board) held concerning its Recommendation 94-1 to the Secretary of Energy. My letter had forwarded a number of questions prompted by that meeting. Your reply will be incorporated into the record of the meeting.

The Board finds that the reply to the questions contained in the attachment to your letter was unresponsive. The Board had asked that a plan be provided specifying how lost time in the program of stabilizing these materials (i.e., the hazardous materials considered in Recommendation 94-1) will be recovered. Your reply confirms that even the deferred commitments in the December 1998 revision to the Implementation Plan for the Recommendation, which generally deferred the initial milestones, are experiencing further delay, and that the time lost toward meeting these commitments will not be recovered. The answers to the detailed questions concerning those commitments fall into two classes, the first identifying funding inadequacy as the cause for the delay, and the second simply stating that further delay will exist and more information on the schedule will be given at a later date, presumably through further amendment of the implementation plan.

Your letter implies no particular concern as to the growing hazards associated with these unstable materials, although it is now five years since the Board first drew attention to the need for their prompt stabilization to render them non-threatening during the period of time that might be needed for decisions as to their ultimate use or disposal. Though the Secretary of Energy expressed agreement with the need for early stabilization when accepting the Recommendation, the acknowledged urgency seems no longer to be recognized.

The Board draws attention to its enabling legislation, where in 42 U.S.C. § 2286d(f)(1) it is stated that,

".....not later than one year after the date on which the Secretary of Energy transmits an implementation plan with respect to a recommendation (or part thereof) under subsection (e), the Secretary shall carry out and complete the implementation plan. If complete implementation of the plan takes more than one year, the Secretary of Energy shall submit a report to the Committees on Armed Services and on Appropriations of the Senate and to the Speaker of the House of Representatives setting forth the reasons for the delay and when implementation will be completed."

Further, in 42 U.S.C. § 2286d(f)(2) it is stated that,

"If the Secretary of Energy determines that the implementation of a Board recommendation (or part thereof) is impracticable because of budgetary considerations, or that the implementation would affect the Secretary's ability to meet the annual nuclear weapons stockpile requirements established pursuant to section 91 of this Act [42 U.S.C. 2121], the Secretary shall submit to the President, to the Committees on Armed Services and on Appropriations of the Senate, and to the Speaker of the House of Representatives a report containing the recommendation and the Secretary's determination."

The Board is of the opinion that, if budgetary considerations are a factor in impeding satisfaction of the Secretary's commitments in the existing and agreed-to implementation plan, as stated in your letter, the provisions of law cited above are automatically invoked, and the required reports to the President and to Congress are in order.

Furthermore, the Board notes the statement in the attachment to your letter, to the effect that,

"a decision regarding construction of the APSF will be made in March 2000 subsequent to completion of pre-conceptual work on the 235-F stabilization and storage option, which is expected in December 1999."

The Board regards this statement to be disingenuous, in that the diversion of the remaining funding for the APSF design has already taken place and the design activity has been shut down. All evidence points to a decision already taken to abandon the APSF concept. Citing the need for a decision as a basis for further delay in meeting the milestones of the implementation plan must be seen as misleading.

The Board continues to regard stabilization of the hazardous residues of the manufacture of nuclear weapons to be of very high urgency, and requests that the Department of Energy set its priorities with this end in mind.

Sincerely,

John T. Conway
Chairman

c: Mr. Mark B. Whitaker Jr.